

AMENDMENTS TO R81-1-6 (Violation Schedule)

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(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a \$25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of [~~any~~] the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

(iii) Third occurrence of [~~any~~] the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a \$200 to \$500 fine for the licensee or permittee and up to a \$50 fine for the officer, employee or agent.

(iv) More than three occurrences of [~~any~~] the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a \$1000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee or agent.

(ii) Second occurrence of [~~any~~] the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$1000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(iii) Third occurrence of [~~any~~] the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$2000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(iv) More than three occurrences of [~~any~~] the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a \$2000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$3000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(ii) Second occurrence of [~~any~~] the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$9000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(iii) More than two occurrences of [~~any~~] the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$9000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying

liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

(ii) More than one occurrence of ~~any~~ the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a \$3000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written		Fine \$ Amount		Suspension No. of Days	Revoke License
Minor						
1st	X	X				
2nd			100 to	500		
3rd			200 to	500	1 to 5	
Over 3			500 to	25,000	6 to	X
Moderate						
1st		X		to 1,000		
2nd			500 to	1,000	3 to 10	
3rd			1,000 to	2,000	10 to 20	
Over 3			2,000 to	25,000	15 to	X
Serious						
1st			500 to	3,000	5 to 30	
2nd			1,000 to	9,000	10 to 90	
Over 2			9,000 to	25,000	15 to	X
Grave						
1st			1,000 to	25,000	10 to	X
Over 1			3,000 to	25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written		Fine \$ Amount	Suspension No. of Days
Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 100	5 to 30
2nd			to 150	10 to 90
Over 2			to 500	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

(i) no prior violation history[;];

(ii) good faith effort to prevent a violation[;];

(iii) existence of written policies governing employee conduct[~~and~~];

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility;
and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems[;];

(ii) prior violation history[;];

(iii) lack of written policies governing employee conduct[;];

(iv) multiple violations during the course of the investigation[;];

(v) efforts to conceal a violation[;];

(vi) intentional nature of the violation[;];

(vii) the violation involved more than one patron or employee[;];

(viii) the violation involved a minor and, if so, the age of the minor[7] ; and
(ix) whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (2007 edition) and is incorporated by reference as part of this rule.